

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**PENNY FARNESE and KELLY WELSH,
On behalf of SARAH JANE WELSH,**

Plaintiff,

v.

**Civil Action No. 2:22-cv-00270
Wood County Circuit Court
Civil Action No. 22-C-123**

RSCR WEST VIRGINIA INC.,

Defendants.

DEFENDANT RSCR WEST VIRGINIA, INC.'S PETITION FOR REMOVAL

COMES NOW, the Defendant and Removing Party, RSCR West Virginia, Inc., by counsel, Suleiman Oko-ogua, Katherine Arritt, and the law firm Bailey & Wyant, PLLC, and hereby petitions this Honorable Court, pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441. In support of its Petition, Defendant RSCR West Virginia Inc. avers the following grounds for removal.

NATURE OF THE REMOVAL

1. Plaintiffs, Penny Farnese and Kelly Welsh, on behalf of Sarah Welsh (hereinafter referred to as “Plaintiffs”), filed the underlying action in Wood County Circuit Court.

2. Plaintiff filed the original Complaint on May 26, 2022, which was served on Defendant by the West Virginia Secretary of State’s Office on or about June 6, 2022. *See* Complaint attached here to as **Exhibit 1**.

3. A copy of the Wood County Circuit Court’s docket sheet is attached hereto

as **Exhibit 2**.

4. The sole cause of action asserted by the Plaintiffs against the Defendant is medical negligence. *See* Complaint at ¶¶ 32-35.

BASIS FOR JURISDICTION

5. Defendant contends removal to this Honorable Court is proper based on diversity of the parties.

6. Plaintiffs Penny Farnese and Kelly Welsh are citizens of Ohio. *See* Complaint ¶¶ 1-3.

7. Defendant RSCR West Virginia, Inc., is a foreign corporation organized under the laws of the State of Delaware, with its principal place of business located at 9901 Linn Station Road, Louisville, Kentucky, 40223. *See* Complaint ¶ 5.

8. Accordingly, the parties are completely diverse for 28 U.S.C. § 1332(a)(1) purposes, which states that the district courts shall have original jurisdiction of all civil actions where the amount in controversy exceed the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

9. This Petition for removal is timely. 28 U.S.C § 1446(b)(1) states that, “the notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.”

10. The Complaint was filed on May 26, 2022. The Complaint was served on Defendant on or about June 6, 2022. Accordingly, the removal is timely.

AMOUNT IN CONTROVERSY

11. Plaintiff has advanced a single theory of recovery pursuant to W.Va. Code § 55-7B-6 *et. seq.*, otherwise known as the West Virginia Medical Professional Liability Act (“MPLA”).

12. W. Va. Code §55-7B-8 states:

(a) In any professional liability action brought against a health care provider pursuant to this article, the maximum amount recoverable as compensatory damages for non-economic loss may not exceed \$250,000 for each occurrence, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees, except as provided in subsection (b) of this section;

(b) The plaintiff may recover compensatory damages for non-economic loss in excess of the limitation described in subsection (a) of this section, but not in excess of \$500,000 for each occurrence, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees, where the damages for noneconomic losses suffered by the plaintiff were for: (1) Wrongful death; (2) permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or (3) permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life-sustaining activities.

13. Although the Complaint does not specify the amount of monetary damages that Plaintiffs are seeking, Plaintiffs, however, allege Sarah Welsh suffered four catastrophic falls as a result of the Defendant’s medical negligence, resulting in severe and permanent injuries.

14. In addition, the Plaintiffs allege as a result of Defendant’s actions Ms. Welsh developed thrombocytopenia, parasitic conditions, and suffered extended blood loss.

15. The Plaintiffs further allege the deterioration of Ms. Welsh’s condition resulted in multiple hospitalizations and extensive medical treatment.

16. The Plaintiffs are seeking compensation for medical treatment, expenses, extreme pain, severe emotional distress, embarrassment, a loss of life's pleasure, the inability to function as a whole woman, and other damages.

17. The Plaintiffs also contend the Defendant acted in a willful and wanton manner and is pursuing punitive damages.

18. Under W. Va. Code §55-7B-8, if the Plaintiffs prove the allegations set forth in the Complaint, they could be awarded non-economic damages in an amount up to \$500,000, in addition to economic or special damages.

19. Accordingly, based on the allegations made by Plaintiff in the Complaint, Defendants have a good faith belief that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

20. As there is complete diversity among the parties in this matter and the amount in controversy exceeds \$75,000.00, Defendant is entitled to removal of this matter from state court to federal court, pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1441, *et. seq.*

21. A Notice of Filing of Removal has been filed with the Clerk of the Circuit Court of Wood County, West Virginia. *See* "Notice of Filing of Removal," attached as **Exhibit 3**.

WHEREFORE, Defendants request that the above-entitled action be removed from the Circuit Court of Wood County, West Virginia, to this Court.

**RSCR WEST VIRGINIA INC.,
By Counsel,**

/s/ Suleiman Oko-ogua
Suleiman Oko-ogua (WV Bar #10713)
Katherine Arritt (WV Bar#10516)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600

Post Office Box 3710
Charleston, West Virginia 25337-3710
T: 304.345.4222
F: 304.343.3133
sokoogua@baileywyant.com
karritt@baileywyant.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**PENNY FARNESE and KELLY WELSH,
On behalf of SARAH JANE WELSH,**

Plaintiff,

v.

**Civil Action No. _____
Wood County Circuit Court
Civil Action No. 22-C-123**

RSCR WEST VIRGINIA INC.,

Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing “**PETITION FOR REMOVAL OF PROCEEDING FROM STATE COURT**” filed through the Court’s Electronic Case Filing (ECF) system on this day June 27, 2022 and was served upon the following parties via electronic mail:

Brian J. Headley, Esq.
Jason S. Ballard, Esq.
Jonathan K. Matthews, Esq.
Headley Ballard, LLC
297 Seven Farms Drive, Suite 302
Daniel Island, SC 29492
Attorney For: Plaintiffs

/s/ Suleiman Oko-ogua
Suleiman Oko-ogua (WV Bar #10713)
Katherine H. Arritt (WV Bar#10516)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
T: 304.345.4222
F: 304.343.3133
sokoogua@baileywyant.com
karritt@baileywyant.com